



4810-AS-P

## **DEPARTMENT OF THE TREASURY**

### **17 CFR Parts 404 and 449**

#### **Disclosure Update**

**AGENCY:** Office of the Assistant Secretary for Financial Markets, Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury (Treasury) is issuing this final rule to amend certain regulations issued under the Government Securities Act of 1986 (GSA). Treasury's recordkeeping and reporting requirements for registered government securities brokers and dealers cross-reference existing Securities and Exchange Commission (SEC) regulations, with modifications. The SEC recently amended certain of its disclosure requirements that may have become redundant, duplicative, overlapping, outdated, or superseded as a result of changes to U.S. Generally Accepted Accounting Principles (U.S. GAAP). The technical amendments to the Treasury recordkeeping rules and Form G-405, referenced in the regulations, conform to SEC amendments regarding the reporting of extraordinary gains and losses, the cumulative effect of changes in accounting principles, and comprehensive income on the annual reports and Form X-17A-5 (Financial and Operational Combined Uniform Single Report or "FOCUS Report").

**DATES:** This final rule is effective January 1, 2019.

**ADDRESSES:** This final rule is available at <http://www.treasurydirect.gov> and <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Lori Santamorena, Executive

Director, or Kevin Hawkins, Associate Director, Department of the Treasury, Bureau of the Fiscal Service, Government Securities Regulations Staff, (202) 504-3632 or e-mail us at govsecreg@fiscal.treasury.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The GSA requires the Secretary of the Treasury to adopt rules with respect to transactions in government securities effected by government securities brokers and dealers in the areas of financial responsibility, protection of investor securities and funds, recordkeeping, reporting, and audit. The regulatory framework established by the GSA requires the Secretary in promulgating these rules to “consider the sufficiency and appropriateness of then existing law and rules applicable” to government securities brokers and dealers.<sup>1</sup> In issuing the final GSA rules, Treasury considered existing regulation with a view toward preventing overly burdensome and duplicative regulation.<sup>2</sup> Treasury’s GSA rules therefore generally provide that compliance by registered government securities brokers and dealers with certain applicable SEC rules constitutes compliance with the GSA rules. Treasury seeks to maintain consistency, where practical, with parallel rules that have been adopted or amended by the SEC for registered brokers and dealers.

Treasury’s recordkeeping rules in part 404 (Recordkeeping and Preservation of Records), and the reporting requirements in part 405 (Reports and Audit) for registered government securities brokers and dealers, cross-reference existing SEC regulations, with

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<sup>1</sup> Pub. L. No. 99-571, 100 Stat. 3208 (1986).

<sup>2</sup> 52 FR 27910 (July 24, 1987).

modifications. The format of reporting under the GSA regulations in part 405 is also substantially similar to that required pursuant to SEC rules. Sections 17 CFR 405.2 and 449.5 of the GSA regulations require that registered government securities brokers and dealers use Form G-405 (Report on Finances and Operations of Government Securities Brokers and Dealers, or the “FOGS Report”) to make the required monthly, quarterly and annual financial reports to the SEC or to their self-regulatory organization.

Treasury adopted the FOGS Report in 17 CFR 449.5 of the GSA regulations based on the SEC’s FOCUS Report. Registered government securities brokers and dealers are required to file financial reports which include information on their assets, liabilities, liquid capital, total haircuts, and ratio of liquid capital to total haircuts, among other items, on the FOGS Report.

## **II. Analysis**

Certain SEC rules contain accounting and disclosure requirements including U.S. GAAP accounting standards. The SEC periodically reviews and amends its disclosure requirements to eliminate rules that become redundant, duplicative, or overlapping as the Financial Accounting Standards Board (FASB) updates U.S. GAAP.

In keeping with this practice, on August 17, 2018, the SEC amended several of its disclosure requirements related to information that is addressed by more recently updated U.S. GAAP requirements.<sup>3</sup> This included amendments regarding the reporting of extraordinary gains or losses, the cumulative effect of changes in accounting principles, and comprehensive income on the annual reports required by paragraph (d) of the Securities Exchange Act Rule 17a-5 and Parts II, IIA, IIB, and III of the FOCUS Report.

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<sup>3</sup> Securities Act Release No. 33-10532, Disclosure Update and Simplification, retrieved from <https://www.sec.gov/rules/final/2018/33-10532.pdf>.

Various SEC disclosure requirements and forms, including the FOCUS Report, that referred only to an income statement (or similar term) were no longer consistent with U.S. GAAP because the FASB replaced the income statement with the statement of comprehensive income.<sup>4</sup> In contrast to net income, which does not include some changes in equity, comprehensive income includes all non-owner changes to equity.

To update its disclosure requirements regarding the annual reports and the FOCUS Report, the SEC's references to "income statement" or "statement of income" are supplemented by "statement of comprehensive income."<sup>5</sup>

As a result of the SEC's amendments regarding the reporting of comprehensive income on the annual reports and FOCUS Report, Treasury determined that it is necessary to make conforming changes to certain rules and financial reports that registered government securities brokers and dealers are required to file.

17 CFR 404.2 incorporates language from Securities Exchange Act Rule 17h-1T, with modifications. Treasury is amending 17 CFR 404.2 by adding the same note contained in the SEC's Rule 17h-1T amendment. The SEC amended Rule 17h-1T (Risk assessment recordkeeping requirements for associated persons of brokers and dealers) by adding a note indicating that statements of comprehensive income must be included in

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<sup>4</sup> See ASU No. 2011-05, *Comprehensive Income (Topic 220): Presentation of Comprehensive Income*. As defined in the FASB's *Accounting Standards Codification* (ASC), comprehensive income is the change in equity of a business entity during the period from transactions and other events and circumstances from nonowner sources.

<sup>5</sup> The FASB also eliminated the concept of extraordinary items from U.S. GAAP noting that preparers found it ambiguous, unnecessary, and rarely used. The FASB noted that eliminating the concept would save time and reduce costs for preparers while alleviating uncertainty for preparers, auditors, and regulators. The FASB also eliminated from U.S. GAAP the requirement to report cumulative effect of a change in accounting principle in the income statement. U.S. GAAP now requires, unless impracticable or otherwise provided for in a newly issued accounting standards update, retrospective application of a change in accounting principle to all prior periods, with the cumulative effect reported in the opening balance of retained earnings for the earliest period presented.

place of income statements, if required by the applicable generally accepted accounting principles.

Treasury is amending the FOGS Report by inserting new line items for reporting comprehensive income or loss when required by U.S. GAAP and eliminating line items for reporting extraordinary gains and losses and the cumulative effect of changes in accounting principles. The general instructions to Parts II and IIA of the FOGS Report will also be amended to reflect these changes.

### **III. Effective Date**

The amendments to 17 CFR 404.2 and the FOGS Report become effective January 1, 2019, and apply to FOGS Reports covering reporting periods ending after December 31, 2018.<sup>6</sup> Treasury has consulted with staff from the SEC and the Financial Industry Regulatory Authority (FINRA) regarding the implementation of the form changes. Treasury understands that FINRA will make available the amended FOGS Report to its members that are registered government securities brokers and dealers. Copies of the FOGS Report may also be obtained by downloading the form from the TreasuryDirect.gov website.

### **IV. Special Analysis**

Executive Orders 13563 and 12866 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of

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<sup>6</sup> The January 1, 2019 effective date aligns with SEC staff's no-action relief regarding the effective date of the SEC's changes to its FOCUS Report. See SEC No Action Letter, *Implementation of Effective Date of Disclosure Update and Simplification Adopting Release for Broker-Dealer Reports* (October 29, 2018).

harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action for purposes of Executive Order 12866.

Because the final rule makes no substantive change to the existing rules and imposes no additional reporting requirements, we find under 5 U.S.C. 553(b)(B) that there is good cause that notice and public procedures are unnecessary, and that the rule can be issued in final form. For the same reasons, we find that a delayed effective date is unnecessary and good cause exists pursuant to 5 U.S.C. 553(d)(3) to issue the rule with less than a 30-day delay.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. These amendments reflect Treasury's continuing interest in meeting its informational needs while minimizing the cost and burden on those entities affected by the regulations.

The amendments to 17 CFR 404.2 and the FOGS Report collectively affect approximately two government securities brokers and dealers who must file periodic reports with the SEC and FINRA, based on the number of registered government securities brokers and dealers who filed these financial reports in September 2018. Treasury shares the SEC's belief that respondents currently provide information in response to U.S. GAAP or other SEC disclosure requirements that have been updated more recently, rather than the superseded requirements covered by the amendments. As a result, we do not believe that these amendments would result in a change to respondents' overall paperwork burden.

#### **List of Subjects in 17 CFR Parts 404 and 449**

Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, 17 CFR parts 404 and 449 are amended as follows:

**PART 404—RECORDKEEPING AND PRESERVATION OF RECORDS**

1. The authority citation for part 404 continues to read as follows;

**Authority:** 15 U.S.C. 78o–5(b)(1)(B), (b)(1)(C), (b)(2), (b)(4).

2. Amend § 404.2 by adding Note 1 to Paragraph (v) of the quoted text in paragraph (b)(4) to read as follows:

**§ 404.2 Records to be made and kept current by registered government securities brokers and dealers; records of non-resident registered government securities brokers and dealers.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

“(v) \* \* \*

Note 1 to paragraph 240.17h-1T(a)(1)(v). Statements of comprehensive income (as defined in 17 CFR 210.1-02) must be included in place of income statements, if required by the applicable generally accepted accounting principles.

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**PART 449—FORMS, SECTION 15C OF THE SECURITIES EXCHANGE ACT OF 1934**

3. The authority citation for part 449 continues to read as follows;

**Authority:** 15 U.S.C. 78o–5(a), (b)(1)(B), (b)(4).

4. Amend Form G-405 Part II (FOGS Report) (referenced in § 449.5):

a. Under the heading “Statement of Financial Condition” by revising paragraph 29, redesignating paragraphs 29.E and F as paragraphs 29.F and G, respectively, and adding a new paragraph 29.E; and

b. By revising the heading “Statement of Income (Loss)” and under that heading, revising the subheading “Net Income”, reserving paragraphs 31, 31.A and 32, revising paragraph 33, redesignating paragraph 34 as paragraph 36, adding new paragraph 34 and paragraphs 34.A and 35, and revising newly redesignated paragraph 36.

The revisions and additions read as follows:

Note: The text of Form G-405 Part II does not, and this amendment will not, appear in the Code of Federal Regulations.

**FORM G-405**  
**REPORT ON FINANCES AND OPERATIONS OF**  
**GOVERNMENT SECURITIES BROKERS AND DEALERS**  
**PART II 11**

\* \* \* \* \*

**STATEMENT OF FINANCIAL CONDITION**

\* \* \* \* \*

29. \* \* \*

|   |             |
|---|-------------|
| E. Accumulated other comprehensive income | _____1797   |
| F. Total                                  | _____1795   |
| G. Less capital stock in treasury         | (_____)1796 |

\* \* \* \* \*



**STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE  
INCOME (as defined in §210.1-02 of Regulation S-X), as applicable**

\* \* \* \* \*

**NET INCOME/COMPREHENSIVE INCOME**

\* \* \* \* \*

31. [RESERVED]

A. [RESERVED]

32. [RESERVED]

33. Net income (loss) after Federal income taxes \$\_\_\_\_\_ 4230

34. Other comprehensive income (loss) \_\_\_\_\_ 4226

A. After Federal income taxes of \_\_\_\_\_ 4227

35. Comprehensive income (loss) \$\_\_\_\_\_ 4228

**MONTHLY INCOME**

36. Income (current month only) before provision for Federal income taxes \$ \_\_\_\_\_ 4211

\* \* \* \* \*

5. Amend the Form G-405 Part II (FOGS Report) (referenced in § 449.5) General  
Instructions by:

a. Revising the heading “Statement of Income (Loss)” and removing from under that heading the subheadings “Extraordinary Items” and “Effect of Changes in Accounting Principles” and their related text; and

b. Revising under the heading “Statement of Changes in Ownership Equity (Sole Proprietorship, Partnership or Corporation)” the text related to the subheading “Net Income (Loss) For Period.”

The revisions read as follows:

Note: The text of Form G-405 Part II General Instructions does not, and this amendment will not, appear in the Code of Federal Regulations.

**FORM G-405, PART II**  
**REPORT ON FINANCES AND OPERATIONS OF**  
**GOVERNMENT SECURITIES BROKERS AND DEALERS**  
**GENERAL INSTRUCTIONS**

\* \* \* \* \*

**STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE**  
**INCOME (as defined in §210.1-02 of Regulation S-X), as applicable**

If there are no items of other comprehensive income in the period presented, the broker or dealer is not required to report comprehensive income.

\* \* \* \* \*

**STATEMENT OF CHANGES IN OWNERSHIP EQUITY**  
**(SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION)**

\* \* \* \* \*

**Net Income (Loss) For Period**

Report the amount of net income (loss) for the period reported on the Statement of Income (Loss) or Statement of Comprehensive Income, as applicable.

\* \* \* \* \*

6. Amend Form G-405 Part IIA (FOGS Report) (referenced in § 449.5) by:
  - a. Revising under the heading “Statement of Financial Condition for Nonclearing, Nonclearing and Certain other Government Securities Brokers or Dealers” paragraph 23

by redesignating current paragraphs 23.E and F as paragraphs 23.F and G, respectively and adding a new paragraph 23.E; and

b. Revising the heading “Statement of Income (Loss)” and under that heading, revising the subheading “Net Income”, removing and reserving paragraphs 19, 19.A and 20, revising paragraph 21, redesignating current paragraph 22 as paragraph 24, adding new paragraph 22 and paragraphs 22.A and 23, and revising newly redesignated paragraph 24.

The revisions and additions read as follows:

Note: The text of Form G-405 Part IIA does not, and this amendment will not, appear in the Code of Federal Regulations.

**FORM G-405**  
**REPORT ON FINANCES AND OPERATIONS OF**  
**GOVERNMENT SECURITIES BROKERS AND DEALERS**  
**PART IIA 12**

\* \* \* \* \*

**STATEMENT OF FINANCIAL CONDITION FOR NONCARRYING,**  
**NONCLEARING AND CERTAIN OTHER GOVERNMENT SECURITIES**  
**BROKERS OR DEALERS**

\* \* \* \* \*

23. \* \* \*

E. Accumulated other comprehensive income \_\_\_\_\_1797

F. Total \_\_\_\_\_1795

G. Less capital stock in treasury ▼16 (\_\_\_\_\_)1796

\* \* \* \* \*

**STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE  
INCOME (as defined in §210.1-02 of Regulation S-X), as applicable**

\* \* \* \* \*

**NET INCOME/COMPREHENSIVE INCOME**

\* \* \* \* \*

19. [RESERVED]

a. [RESERVED]

20. [RESERVED]

21. Net income (loss) after Federal income taxes \$\_\_\_\_\_ 4230

22. Other comprehensive income (loss) \_\_\_\_\_ 4226

a. After Federal income taxes of \_\_\_\_\_ 4227

23. Comprehensive income (loss) \$\_\_\_\_\_ 4228

**MONTHLY INCOME**

24. Income (current month only) before provision for Federal income taxes \$\_\_\_\_\_ 4211

\* \* \* \* \*

7. Amend the General Instructions to Form G-405 Part IIA (FOGS Report)

(referenced in § 449.5) by:

a. Revising the heading “Statement of Income (Loss)” and removing from under that heading paragraphs 19 and 20; and

b. Revising under the heading “Statement of Changes in Ownership Equity (Sole Proprietorship, Partnership or Corporation)” the text related to the subheading “Net Income (Loss) For Period.”

The revisions read as follows:

Note: The text of Form G-405 Part IIA General Instructions does not, and this amendment will not, appear in the Code of Federal Regulations.

**FORM G-405, PART IIA**  
**REPORT ON FINANCES AND OPERATIONS OF**  
**GOVERNMENT SECURITIES BROKERS AND DEALERS**  
**GENERAL INSTRUCTIONS**

\* \* \* \* \*

**STATEMENT OF INCOME (LOSS) or STATEMENT OF COMPREHENSIVE**  
**INCOME (as defined in §210.1-02 of Regulation S-X), as applicable**

If there are no items of other comprehensive income in the period presented, the broker or dealer is not required to report comprehensive income.

\* \* \* \* \*

**STATEMENT OF CHANGES IN OWNERSHIP EQUITY**  
**(SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION)**

\* \* \* \* \*

**Net Income (Loss) For Period**

Report the amount of net income (loss) for the period reported on the Statement of Income (Loss) or Statement of Comprehensive Income, as applicable.

\* \* \* \* \*

8. Amend the Form G-405 Part III (FOGS Report) (referenced in § 449.5) by revising under the heading “Oath or Affirmation” checkbox (c) to read as follows:

Note: The text of Form G-405 Part III does not, and this amendment will not, appear in the Code of Federal Regulations.

**ANNUAL AUDITED REPORT**

**FORM G-405 PART III**

\* \* \* \* \*

**OATH OR AFFIRMATION**

\* \* \* \* \*

☐ (c) Statement of Income (Loss) or, if there is other comprehensive income in the period(s) presented, a Statement of Comprehensive Income (as defined in §210.1-02 of Regulation S-X).

\* \* \* \* \*

Brian Smith,

Deputy Assistant Secretary for Federal Finance

[FR Doc. 2018-28051 Filed: 12/26/2018 8:45 am; Publication Date: 12/27/2018]